

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Renee C.,  
Plaintiff,

2:23-cv-01665-MDC

vs.

Kilolo Kijakazi, Commissioner of Social  
Security,

**ORDER GRANTING MOTION TO  
REMAND (ECF NO. 10) AND DENYING  
COUNTERMOTION TO AFFIRM (ECF NO.  
13)**

Defendant.

Plaintiff Renee C. filed a *Motion for Remand* (“Motion”) regarding the Administrative Law Judge’s (“ALJ”) final decision denying her social security benefits. ECF No. 10. The Commissioner filed a *Countermotion to Affirm* (“Countermotion”). ECF No. 13. The Court GRANTS the plaintiff’s Motion and DENIES the Commissioner’s Countermotion.

**I. BACKGROUND**

Renee filed an application for a period of disability and disability insurance benefits on May 31, 2020, alleging disability commencing on October 14, 2019. AR 232-233. The ALJ followed the five-step sequential evaluation process to guide the decision. 20 C.F.R. § 416.924(a). The ALJ agreed that Renee did not engage in substantial gainful activity since October 14, 2019. AR 19. The ALJ found that Renee suffered from medically determinable severe impairments consisting of carpal tunnel syndrome, diabetes mellitus, and migraines. AR 20. The ALJ decided that the impairments did not meet or equal any “listed” impairment. AR 21, citing 20 C.F.R. part 404, subpart P, Appendix 1. The ALJ determined that Renee retained the residual functional capacity to perform:

light work as defined in 20 CFR 404.1567(b) except with the following limitations:

Exertional Limitations: She can lift 20 pounds occasionally and 10 pounds frequently; carry 20 pounds occasionally and 10 pounds frequently; sit for 6 hours, stand for 6 hours, walk for 6 hours, push and/or pull as much as she can

lift and/or carry.

Manipulative Limitations: She can finger, feel, and handle items frequently with the left hand, and can finger, feel, and handle items frequently with the right hand. Postural Limitations: The claimant can never climb ladders, ropes, or scaffolds, crouch frequently, crawl occasionally. Environmental Limitations: The claimant can work at unprotected heights frequently, moving mechanical parts frequently.

AR 22.

The ALJ compared the residual functional capacity assessed to the demands of Renee's past relevant work as a phlebotomist/clinical lab assistant, elementary teacher, and teacher/case manager and decided that Renee could perform that kind of work. AR 27. The ALJ concluded that Renee did not suffer from a disability between October 14, 2019, and the date of the decision. AR 27.

Plaintiff argues that (1) the ALJ failed to articulate clear and convincing reasons for discounting Renee's subjective complaints and (2) the ALJ's residual functional capacity assessment lacks the support of substantial evidence. ECF No. 10. The Commissioner argues in both her counter-motion and response that the ALJ (1) reasonably discounted plaintiff's subjective symptom statements and (2) reasonably assessed plaintiff's RFC.

## II. DISCUSSION

### A. Legal Standard

The Fifth Amendment prohibits the government from depriving persons of property without due process of law. U.S. Const. amend. V. Social security plaintiffs have a constitutionally protected property interest in social security benefits. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Gonzalez v. Sullivan*, 914 F.2d 1197, 1203 (9th Cir. 1990). "On judicial review, an ALJ's factual findings [are] 'conclusive' if supported by 'substantial evidence.'" *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019) (quoting 42 U.S.C. § 405(g)).

Evaluating a claimant's subjective symptom testimony "becomes important at the stage where the ALJ is assessing residual functional capacity, because the claimant's subjective statements may tell

1 of greater limitations than can medical evidence alone.” *Tonapetyan v. Halter*, 242 F.3d 1144, 1147 (9th  
2 Cir. 2001) (citing Social Security Ruling (SSR) 96-7P)).<sup>1</sup> “Such testimony is inherently subjective and  
3 difficult to measure.” *Coleman v. Saul*, 979 F.3d 751, 755-56 (9th Cir. 2020). This evaluation is often  
4 crucial to a finding of disability. *Id.* (citing *Fair v. Bowen*, 885 F.2d 597, 602 (9th Cir. 1989)).

5       There is a two-step test for evaluating a claimant's subjective symptom testimony. *Garrison v.*  
6 *Colvin*, 759 F.3d 995, 1014-15 (9th Cir. 2014) (internal citations omitted). First, the ALJ must determine  
7 whether the claimant has presented objective medical evidence of an underlying impairment which  
8 could reasonably be expected to produce the pain or other symptoms alleged. *Id.* If the claimant  
9 satisfies the first step of the test, "and there is no evidence of malingering, the ALJ can reject the  
10 claimant's testimony about the severity of her symptoms only by offering specific, clear and convincing  
11 reasons for doing so." *Id.* (internal quotation marks and citations omitted). "This is not an easy  
12 requirement to meet: The clear and convincing standard is the most demanding required in Social  
13 Security cases." *Id.* (internal quotation marks and citations omitted).

14       “ALJs must be especially cautious in concluding that daily activities are inconsistent with  
15 testimony about pain, because impairments that would unquestionably preclude work and all the  
16 pressures of a workplace environment will often be consistent with doing more than merely resting in  
17 bed all day.” *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014) (citations omitted). That a claimant  
18 can participate in some activities does not contradict evidence of otherwise severe problems encountered  
19 in daily life during the relevant period. *Diedrich v. Berryhill*, 874 F.3d 634, 643 (9th Cir. 2017.)  
20 Household chores, cooking simple meals, self grooming, paying bills, writing checks, and caring for a  
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22  
23 <sup>1</sup> Social Security Administration (SSA) previously referred to this as a credibility determination. SSR  
24 96-7P. SSA subsequently eliminated use of the term “credibility.” SSA has clarified that “subjective  
25 symptom evaluation is not an examination of an individual’s character.” Instead, the adjudicator  
considers all of the evidence in evaluating the intensity and persistence of a claimant’s symptoms. SSR  
16-3P.

pet in one's own home, and occasional shopping are not similar to typical work responsibilities. *Id.* (citation omitted).

An ALJ need not “perform a line-by-line exegesis” of the claimant’s testimony, but the Court “cannot review whether the ALJ provided specific, clear, and convincing reasons for rejecting [the claimant’s] pain testimony where, as here, the ALJ never identified which testimony she found not credible, and never explained *which* evidence contradicted that testimony.” *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020) (emphasis original, quoting *Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th Cir. 2015)). The ALJ must specifically identify the testimony she or he finds not to be credible and must explain what evidence undermines that specific testimony. *Brown-Hunter*, 806 F.3d at 494. The ALJ must connect the testimony to the particular parts of the record. *Id.* “[P]roviding a summary of medical evidence in support of a residual functional capacity finding is not the same as providing clear and convincing reasons for finding the claimant’s symptom testimony not credible.” *Id.* at 493.

### **B. Analysis of Plaintiff’s Subjective Symptom Complaints**

Plaintiff testified<sup>2</sup> that she suffers from multiple physical and mental conditions, including but not limited to carpal tunnel, arthritis, asthma, neuropathy, diabetes, chronic migraines, depression, post-traumatic stress disorder, and anxiety. ECF No. 22. She alleges that she constantly falls and drops things, struggles with mobility and motor skills, is losing feeling in her hands and feet, has constant knee pain and swelling, sleeps with wrist braces, can only stand for 15 minutes, takes 20 minutes to walk straight, and 45 minutes to get up from a seated position. ECF No. 23. She testified that she has breathing problems because of her asthma, that she has had long hospital stays for pneumonia and Covid, and that her breathing problems prevent her from exercising and doing household chores. *Id.* She

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<sup>2</sup> Plaintiff states that the ALJ adequately summarized her testimony and written statements. AR 22-24. The Court also reviewed her testimony (AR 47-51) and her written statements addressing the limiting effects of her impairments (AR 255-262, 266-286, 307-315, 316-319, 323-332). For brevity, the Court does not repeat all of her testimony here.

1 alleges that she uses a cane to walk, that her husband does the chores, that she needs to lean on the  
2 basket at the grocery store, and that her husband and grandson unload the groceries. *Id.* She testified that  
3 she had handles installed in her tub and toilet. AR 24. She testified that she still engages in creative  
4 activities such as painting but noted that she could only do so for 15 to 20 minutes before her hands went  
5 numb, and she had to take a break. *Id.*

6 The plaintiff testified that she could prepare simple meals, perform some household chores, drive  
7 and ride in a car, shop in stores, manage her own financial affairs, and take care of her grooming and  
8 hygiene. ECF No. 23. The plaintiff testified that her conditions affect her ability to do many tasks, such  
9 as lift, squat, use her hands, and concentrate. *Id.* The ALJ recited the two-part test for weighing  
10 symptom and limitation testimony. AR 22. The ALJ agreed that plaintiff had an impairment that could  
11 cause the limitations. AR 23-24. There is no evidence of malingering in the record. The ALJ rejected the  
12 persistence and limiting effects of those impairments. *Id.* The ALJ found that plaintiff's "activities of  
13 daily living in conjunction with the medical evidence demonstrating minimal abnormalities, reflects a  
14 significant functional capacity and not an individual unable to sustain regular and continuing work due  
15 to medically determinable impairments." ECF No. 26.

16 The ALJ discounted plaintiff's statements due to the extent of her daily activities, without  
17 analysis. AR 26. *Diedrich*, 874 F.3d at 643 (Household activities like cooking simple meals and paying  
18 bills are not similar to typical work responsibilities). For example, the ALJ does not analyze what  
19 testimony is being discredited because of her daily activities and why. In addition to the lack of analysis  
20 regarding her daily activities, the ALJ also did not specifically identify what medical evidence  
21 undermines plaintiff's specific testimony.

22 While the ALJ summarized the medical evidence, he did not adequately tie that evidence to  
23 plaintiff's testimony. AR 24-27. For example, the ALJ notes that in March 2021, plaintiff had home  
24 health care therapy for one month, and showed improvement (ECF No. 25) but the plaintiff maintains  
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1 that she falls constantly and continues to deteriorate (ECF No. 23). The ALJ did not analyze the  
2 opinions in the record as specific reasons why he found the plaintiff's allegations as unsupported.  
3 *Brown-Hunter*, 806 F.3d at 494. The ALJ did not offer specific, clear and convincing reasons for  
4 rejecting plaintiff's subjective symptom statements. The ALJ erred. Since the Court finds that the ALJ  
5 erred and remands this matter for further administrative proceedings, the Court does not address  
6 plaintiff's remaining arguments.

7 ACCORDINGLY,

8 **IT IS ORDERED that:**

- 9 1. Plaintiff Renee C.'s *Motion for Remand* (ECF No. 10) is GRANTED.
- 10 2. The Commissioner's *Countermotion to Affirm* (ECF No. 13) is DENIED.
- 11 3. The Clerk of Court is DIRECTED to enter final judgment VACATING the decision of the  
12 Commissioner of Social Security and REMANDING this case for further proceedings  
13 consistent with this Order.  
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15 DATED this 12<sup>th</sup> day of August 2024.

16 IT IS SO ORDERED.

17   
18 Hon. Maximiliano D. Couvillier III  
19 United States Magistrate Judge  
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